IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 1385 OF 2007.
IN
SUIT NO. 3158 OF 1998.

The Board of Trustees of the Port of Mumbai. ... Plaintiff.

Versus.

M/s.K.B.Trading Company & others. ... Defendants.

Ms.Priti Shah i/by M/s.Mulla & Mulla C.B.C. for the Plaintiff.

Shri Shailesh Mendon i/by M/s.A.Mehta Laljee & Co. for Defendant No.2.

Ms.G.D'Souza i/by K.R.Shivram for the Defendant No.3.

CORAM : ABHAY S.OKA, J.

DATED : 24th Sept., 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Chamber Summons. I have heard the learned Counsel appearing for the 3rd Defendant who has opposed the Chamber Summons. The learned Counsel appearing for the 2nd Defendant had left it to the Court. He, howevr, submitted that considering the fact that the Chamber Summons has been filed belatedly, if this Court is inclined to allow the Chamber Summons, costs may be awarded.

2. The Plaintiffs have filed the suit against the Defendants for recovery of a sum of Rs.76,414.37 ps. together with interest on the principal amount. According to the case of the Plaintiffs, they are the

owners of the docks at Bombay. In the plaint it is asserted that in November 1993 the 1st Defendant imported a consignment of one container containing film scrap. In paragraph 5 of the plaint, it is stated that the Defendants are importers and/or owners and/or consignees in respect of the said consignment. It is stated that the consignment was not cleared for over two months from the date of landing. A reference has been made in the plaint to the correspondence/notices addressed by the Plaintiffs to the Defendants and a public notice given in the official gazette. It is stated that the consignment has been sold by the Plaintiffs and after adjusting the sale price, a sum of Rs.67,259.45 remained due and payable by the Defendants towards charges of the Plaintiffs.

3. By the Chamber Summons the Plaintiffs desire to add following averments in paragraph 2 of the plaint:

> "Defendants Nos.2 and 3 are the owners/agents/ slot agents of the vessel SS E/NOVA which discharged the goods referred to hereinafter into the custody of the Plaintiffs and as such the Bailors thereof".

The objection of the learned Counsel appearing for the Defendant No.3 is that in the suit of the year 1998 the

amendment has been belatedly moved. She submitted that in the plaint there are no averments as regards the role of the 2nd and 3rd Defendants and at a belated stage the Plaintiffs want to incorporate such vague averments. She submitted that if the amendment is allowed, it will cause prejudic to the 3rd Defendant. She, therefore, submitted that the Chamber Summons deserves to be dismissed.

4. I have considered the submissions. In paragraph 5 of the plaint it is alleged that the Defendants are the importers and/or owners and/or consignees in respect of the consignment which is the subject matter of the suit. The Plaintiffs have referred to and relied upon the correspondence made and the notices issued to the 2nd and 3rd Defendants. It is alleged in the plaint that the 2nd and 3rd Defendants are liable to pay the amount to the Plaintiffs. Considering the averments which are already made in the plaint, it cannot be said that the proposed amendment will change the nature of the suit. The amendment will be in fact necessary for effectually adjudicating the dispute involved in the suit. Therefore, the amendment deserves to be allowed.

5. It is true that the Chamber Summons for amendment has been belatedly filed. The Chamber Summons has been filed only after a decree was passed against

the 1st Defendant. Therefore, while allowing the Chamber Summons, the 2nd and 3rd Defendants must be compensated by ordering payment of costs. The amount of costs is quantified at Rs.5000/-.

6. Accordingly the Chamber Summons is made absolute in terms of prayer clause (a) subject to the Plaintiffs paying costs of Rs.5000/- each to the 2nd and 3rd Defendants within a period of six weeks from today. The payment of costs will be a condition precedent.

7. It will be open for the 2nd and 3rd Defendants to file written statement or additional written statement within a period of six weeks from the date on which they are served with a copy of the amended plaint.

8. Suit shall be listed for settlement of issues after the written statements are filed.

9. Certified copy is expedited.

Judge.